

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DANE R. GILLETTE  
Chief Assistant Attorney General  
3 GARY W. SCHONS  
Senior Assistant Attorney General  
4 MATTHEW MULFORD  
Deputy Attorney General  
5 ANDREW MESTMAN, State Bar No. 203009  
Deputy Attorney General  
6 110 West A Street, Suite 1100  
San Diego, CA 92101  
7 P.O. Box 85266  
San Diego, CA 92186-5266  
8 Telephone: (619) 645-2458  
Fax: (619) 645-2271  
9 Email: Andrew.Mestman@doj.ca.gov

10 Attorneys for Respondent

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13

14 **ANTONIO MICHAEL VITALE,**

Petitioner,

15 v.  
16

17 **JAMES TILTON, Secretary,**

Respondent.  
18  
19

08-0331 JLS (WMc)

**ANSWER TO PETITION FOR  
WRIT OF HABEAS CORPUS**

Honorable William McCurine, Jr.

20 Respondent James Tilton, Secretary of the California Department of  
21 Corrections and Rehabilitation, through his counsel, Edmund G. Brown Jr., Attorney  
22 General of the State of California, and Andrew S. Mestman, Deputy Attorney  
23 General, files this Answer to the Petition for Writ of Habeas Corpus (the Petition)  
24 pursuant to the Order of this Court filed on February 25, 2008. Respondent denies  
25 and affirmatively alleges as follows:

26 **I.**

27 Petitioner Antonio Michael Vitale is in the lawful custody of Tilton, pursuant  
28 to a valid judgment of conviction by a jury of three counts of forcible rape and four

1 counts of forcible oral copulation. The Honorable Frank A. Brown entered judgment  
2 in the San Diego County Superior Court, Case No. SCD1868776, on April 25, 2005.

3 **II.**

4 The Petition is not barred by the statute of limitations. 28 U.S.C. § 2244(d).

5 **III.**

6 Petitioner has exhausted his state court remedies. 28 USC § 2254(b)(1)(A).

7 **IV.**

8 The issues raised in the Petition were adjudicated on the merits in the  
9 state court. As a result, this Court must apply the highly deferential standard of  
10 federal habeas corpus review established by the Antiterrorism and Effective Death  
11 Penalty Act of 1996. 28 U.S.C. § 2254(d).

12 **V.**

13 The Petition raises three claims for relief: (1) That there was insufficient  
14 evidence supporting his convictions for forcible rape and forcible oral copulation;  
15 (2) the trial court failed to instruct on the defendant's mistaken, but good faith  
16 belief that the victims consented to the sexual acts; and (3) the trial court erred by  
17 admitting evidence pursuant to California Evidence Code section 1108. The  
18 California courts rejected these claims. The state's denial of these claims was  
19 reasonable and warrants deference under AEDPA.

20 **VI.**

21 The state courts made numerous express and implied factual findings.  
22 Petitioner has shown no grounds why the presumption of correctness mandated by 28  
23 U.S.C. § 2254(e)(1) should not apply to these factual findings, nor does he explain  
24 why the state court's decision was factually unreasonable. 28 U.S.C. § 2254 (d)(2).

25 **VII.**

26 It is unnecessary to hold an evidentiary hearing to resolve any issues raised  
27 in the Petition. Petitioner is not entitled to an evidentiary hearing to resolve his  
28 claims since any failure to develop the factual predicate for his claims cannot be

1 excused because Petitioner cannot show that: (1) his claims are predicated on a new  
2 rule of law with retroactive application; or (2) the factual predicate of his claims  
3 could not have been discovered earlier with due diligence; and (3) the facts  
4 underlying his claims would establish by clear and convincing evidence that but for  
5 constitutional error, no reasonable factfinder would have found Petitioner guilty. 28  
6 U.S.C. § 2254(e)(2).

#### 7 VIII.

8 The Petition fails to demonstrate that the state court's adjudication on the  
9 merits was contrary to, or involved an unreasonable application of, clearly established  
10 United States Supreme Court precedent. 28 U.S.C. § 2254(d)(1).

#### 11 IX.

12 Respondent has lodged all transcripts, briefs, and opinions in counsel's  
13 possession that are required by Rule 5(c) and (d) of the rules governing section  
14 2254 cases in the United States District Courts. Respondent incorporates all of the  
15 lodgments into this Answer.

#### 16 X.

17 The relevant facts and procedural history set forth in the accompanying  
18 Memorandum of Points and Authorities are incorporated by reference herein. Except  
19 as expressly admitted, Respondent denies each and every allegation of the Petition  
20 and specifically denies that Petitioner's confinement is in any way improper, that any  
21 condition of Petitioner's confinement is illegal, or that any of his rights has or is  
22 being violated in any way.

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1 WHEREFORE, Respondent respectfully requests this Court not to hold an  
2 evidentiary hearing, deny the Petition for Writ of Habeas Corpus with prejudice and  
3 decline to issue a certificate of appealability.

4 Dated: April 15, 2008

5 Respectfully submitted,

6 EDMUND G. BROWN JR.  
Attorney General of the State of California  
7 DANE R. GILLETTE  
Chief Assistant Attorney General  
8 GARY W. SCHONS  
Senior Assistant Attorney General  
9 MATTHEW MULFORD  
Deputy Attorney General

10 s/Andrew Mestman

11 ANDREW MESTMAN  
12 Deputy Attorney General  
13 Attorneys for Respondent

14 AM:adc

15 80226543.wpd  
SD2008700174

**CERTIFICATE OF SERVICE BY U.S. MAIL**

Case Name: **Vitale v. Tilton**

No.: **08-0331 JLS (WMC)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 15, 2008, I served the following documents:

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**Electronic Mail Notice List**

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case: n/a

**Manual Notice List**

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

Patrick Morgan Ford  
Attorney at Law  
1901 First Avenue, Suite 400  
San Diego, CA 92101  
(Attorney for Petitioner)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 15, 2008, at San Diego, California.

A. Curiel

Declarant



Signature

SD2008700174

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